

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 11, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP2504**

**Cir. Ct. No. 2014JV300**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE INTEREST OF JUWON B., A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**JUWON B.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Kenosha County:  
JASON A. ROSSELL, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.<sup>1</sup> Juwon B. appeals from an order waiving juvenile court jurisdiction over him and thus sending him to adult court to face charges of kidnapping, false imprisonment, and battery, all as party to a crime. Juwon argues that the circuit court erroneously exercised its discretion when it (1) found that Juwon had no rehabilitative need that would appropriately be addressed by the juvenile court, (2) gave great weight to Juwon’s proximity to age seventeen, and (3) failed to determine on the record that it was in the best interests of Juwon or the public to waive jurisdiction. We affirm.

### BACKGROUND

¶2 As alleged in the delinquency petition, someone stole personal items from Juwon and his brother, Ricardo, including an \$800 watch, a Sony Playstation, and four or five games. Ricardo reported the burglary to the police and described the burglars. He told the responding officer that “he was going to find the person that did this on his own.” Later that day, Ricardo “recognized Steven as the person who had stolen the Playstation and games.” Ricardo confronted him, choked him, and, when Steven tried to walk away, shoved his face into a fence. At this point, Juwon was not there. Ricardo told a friend to go get Ricardo’s brother, and the friend came back with Juwon.

¶3 According to Steven, Juwon got out of the car and punched him three times in the face. Juwon asked Steven where the Playstation was, and Steven said he did not know. Steven said he might know who had the Playstation, a person who looked like him named Rico. Steven says he was then forced into

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

the back seat of the car, between Juwon and Ricardo. Ricardo's friend drove them to a house to get a baseball bat, but no one was home. They went to another house looking for Rico and then went to Juwon and Ricardo's house. Ricardo said he was going to tie Steven up and beat him. When Juwon got out of the car, Steven got out and ran away. Steven went to someone's house and told them to call the police.

¶4 Juwon's side of the story is that Steven punched him first. Juwon punched Steven back, and the two fell to the ground wrestling, then talked, and Steven agreed to go with them to Juwon's house. When they got to the house, Steven ran away.

¶5 The State filed a delinquency petition, charging Juwon with kidnapping, false imprisonment, and battery, all as a party to a crime. The State also petitioned to waive juvenile court jurisdiction. In support, the State indicated that Juwon would turn seventeen in about two months and that there would be insufficient time for disposition of charges and treatment within the juvenile justice system. The State further alleged that Juwon should be in adult court to adequately protect the public, due to the serious nature of the charges and because the co-actor was an adult. The court granted the State's petition to waive juvenile court jurisdiction, and this court granted leave for Juwon to appeal the circuit court's nonfinal order. *See* WIS. STAT. RULE 809.50(3).

## DISCUSSION

### *Standard of Review of Waiver Determination*

¶6 The decision to waive juvenile court jurisdiction rests within the sound discretion of the juvenile court. *State v. Tyler T.*, 2012 WI 52, ¶24, 341 Wis. 2d 1, 814 N.W.2d 192. WISCONSIN STAT. § 938.18 governs waiver of juvenile court jurisdiction. After determining whether prosecutive merit exists, the court is to consider the following factors: the personality of the juvenile, the juvenile’s prior record, the type and seriousness of the offense, the adequacy and suitability of facilities and procedures available for treatment of the juvenile, and the desirability of trial and disposition of the entire offense in one court. Sec. 938.18(5). The court

shall state its finding with respect to the criteria on the record, and, if the court determines on the record that there is clear and convincing evidence that it is contrary to the best interests of the juvenile or the public to hear the case, the court shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate proceedings in the court of criminal jurisdiction.

Sec. 938.18(6) In reviewing the juvenile court’s discretionary determination on waiver, this court looks for reasons to uphold the court’s decision. *Tyler T.*, 341 Wis. 2d 1, ¶24. Finally, it is within the circuit court’s discretion how much weight it gives to each factor it considers. *G.B.K. v. State*, 126 Wis. 2d 253, 259, 376 N.W.2d 385 (Ct. App. 1985).

### *Application of Waiver Factors*

¶7 We examine the court’s consideration of the WIS. STAT. § 938.18(5) factors. First, regarding the personality of the juvenile, the court acknowledged that Juwon was a “good kid who made a mistake.” The court indicated that Juwon

“is acting as a typical 16 year old child. He lives in his parent’s household. He goes to school. Does well in school as far as I can tell.... His pattern of living is that of a juvenile.” Second, the court addressed Juwon’s prior record, indicating that Juwon did not have one. Third, the court discussed the seriousness of the offenses, which it found significant. The court characterized the kidnapping offense as “extremely serious,” noting that kidnapping is “one of the nine statutes ... that is specifically designated by the legislature for consideration for waiver even at the age of 14.” The court described the offense as “vigilantism” and “fueled by anger.” The court addressed the adequacy and suitability of facilities and procedures available for treatment. Here, the court concluded that “everything is available,” but that nothing was suitable. The court noted that the purpose of juvenile court was rehabilitation, but that the court “can’t find a rehabilitative need.” As part of this discussion, the court also considered Juwon’s proximity to age seventeen, because Juwon’s age gives the juvenile system a relatively short period of time in which to accomplish rehabilitation and treatment. Under *G.B.K.*, the court may give great weight to this factor. *See G.B.K.*, 126 Wis. 2d at 260. Finally, the court noted that the final statutory factor—desirability of trial of the entire offense in one court—was not very strong because the court did not see that waiver would benefit judicial economy.

### *Lack of Rehabilitative Need*

¶8 Juwon first argues that the court erroneously exercised its discretion when it found that Juwon had no rehabilitative need and concluded there was nothing the juvenile court could do because “it’s based on rehabilitation.” Juwon argues this conclusion is not supported by the facts because the social worker from the Kenosha County Department of Human Services testified that there were programs and services that the Department could provide to Juwon “to build on

skills and competency he already has and to look at new ways.” In response, the State points out that the social worker noted that he was not sure there was much to offer Juwon because Juwon did not have any treatment needs. The social worker questioned whether the services available in juvenile court were suitable for Juwon “since Juwon may have already reached his seventeenth birthday by the time this file is resolved.” The social worker indicated in his report that community-based services present the disadvantage that “if they fail to keep Juwon out of further trouble, there may be little time remaining before his eighteenth birthday.” On the other hand, placement services “may not be the least restrictive option available, and could disrupt the positive relationship between mother and son.” Finally, the social worker opined that placement in a correctional facility, either through the Serious Juvenile Offender program or direct commitment, “is considered unnecessary given Juwon’s lack of prior history and generally acceptable behavior in the community ... the current file notwithstanding.”

¶9 The circuit court gave a reasoned explanation for its conclusion that Juwon did not have a need for rehabilitation. The court took into account that all services were available, but concluded that none were suitable. Given Juwon’s background, the court could not identify any rehabilitative needs. The court saw Juwon as a good kid who had made some bad choices, bad choices that were not subject to rehabilitation in the juvenile court system. The court could only see the juvenile court putting Juwon on supervision for a couple of years. In short, the court concluded, “I can’t find any rehabilitative need.” Given the social worker’s testimony about the drawbacks of the different options in Juwon’s case, it was not unreasonable for the circuit court to conclude that Juwon was not a prospect for

rehabilitation in the juvenile court system. The record supports the court's conclusion.

*Weight Given to Juwon's Age*

¶10 Juwon's second argument is that the court erroneously exercised its discretion by giving too much weight to the proximity of Juwon's seventeenth birthday "when the evidence showed there was time to provide services in the juvenile system." As noted above, the weight the court gives to each factor is within its discretion. See *G.B.K.*, 126 Wis. 2d at 259. Furthermore, the court may give weight to the proximity to age seventeen. *Id.* at 260.

¶11 Juwon points to the social worker's testimony regarding the availability of several programs and that there would be "plenty of time." On the other hand, the social worker noted repeatedly that Juwon is almost seventeen and testified that the one program that would retain Juwon in the system past his eighteenth birthday was the Serious Juvenile Offender program, which the social worker found would be "overkill."

¶12 In rejecting rehabilitative programs, the court reasoned:

[E]verything is available. But I got to be honest. I don't think anything is ... suitable.... I think Juwon is pretty much a good kid who made a mistake. Who made a bad choice. But that leads to the problem. The problem is the juvenile court is here for rehabilitation. I can't find a rehabilitative need....

....

The question of the juvenile system ... is whether or not those bad choices are something that can be rehabilitated. I'm not sure that they can in this case. And so, for those reasons I am going to waive him into adult court.

Given Juwon's age and the social worker's testimony that the available long-term program would be overkill, it was not unreasonable for the circuit court to conclude that Juwon's age contributed to his unsuitability for rehabilitation in the juvenile court system.

### *Best Interests Finding*

¶13 Finally, Juwon argues that the court erred because it did not make its finding that there was clear and convincing evidence that hearing the case in juvenile court is contrary to the best interests of the juvenile or the public on the record after it considered the factors. The court stated the standard at the beginning of its ruling: "The court must decide whether the State has met the burden by clear and convincing evidence that it would be contrary to the best interests of the juvenile or the public to hear the case in juvenile court." The court then went on to address the factors and explain its conclusion, stating ultimately "for those reasons I am going to waive him into adult court."

¶14 The court need not follow a rote, formulaic approach to its ruling. The court addressed all the statutory factors. It explained its reasoning and conclusion. It stated the burden the State had to meet and indicated that it had been met. This was an appropriate exercise of discretion.

### CONCLUSION

¶15 The circuit court properly exercised its discretion in addressing the factors relevant to the State's request to waive juvenile jurisdiction over Juwon. The court gave a reasonable explanation for its decision, and we will not disturb it on appeal.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4.

